

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

FOR MR. CHIEF JUSTICE MARTIN.

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TRANSCRIPT OF RECORD

Chief
R
Vance

Court of Appeals of the District of Columbia

JANUARY TERM, 1928.

No. 4718.

510

MAI G. WYATT, APPELLANT,

vs.

JOHN J. MADDEN.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED FEBRUARY 7, 1928.

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Court of Appeals of the District of Columbia

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JOHN J. MADDEN, APPELLEE.

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Court of Appeals of the District of Columbia

No. 4718.

MAI G. WYATT, Appellant,

VS.

JOHN J. MADDEN.

a Supreme Court of the District of Columbia.

At Law.

No. 73788.

JOHN J. MADDEN, Plaintiff,

VS.

MAI G. WYATT, Defendant.

UNITED STATES OF AMERICA,

District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Amended Declaration.*

Filed October 17, 1927.

In the Supreme Court of the District of Columbia, Holding
a Circuit Court.

Law. No. 73788.

JOHN J. MADDEN, Plaintiff,

VS.

MAI G. WYATT, Defendant.

The plaintiff, John J. Madden sues the defendant, Mai G. Wyatt, for money payable by said defendant to the plain-

tiff for that heretofore to wit, on the 17th day of March, 1926 the said defendant, Mai G. Wyatt by her certain promissory note bearing said date and now overdue and unpaid promised to pay to the order of John J. Madden, meaning thereby the plaintiff, the sum of Ten Thousand Dollars (\$10,000) in installments of One Hundred Dollars (\$100) on the first day of May, 1926 and on the first day of each and every month thereafter, with interest from the first day of May, 1926 until paid at the rate of seven per centum per annum; that also on to wit the 17th day of March, 1926 the said defendant by her certain promissory note bearing said date and now overdue and unpaid, promised to pay to the order of John J. Madden the sum of Ten Thousand Dollars (\$10,000) in installments of One Hundred Dollars (\$100) on the first day of May, 1926 and on the first day of each and every month thereafter, with interest from the first day of May, 1926 until paid at the rate of seven per centum per annum; but although often

thereunto requested, the said defendant has not nor
2 has anyone for her paid the whole or any part of the principal or interest of said notes; but to discharge the whole or any part of her obligation under said notes, the said defendant has wholly failed, neglected and refused, and still fails, neglects and refuses.

Wherefore, the said plaintiff brings this suit and claims from the said defendant Twenty Thousand Dollars (\$20,000) with interest at the rate of seven per centum per annum from May 1, 1926, besides costs.

Second Count. The plaintiff John J. Madden sues the defendant Mai G. Wyatt for money payable by said defendant to the plaintiff for that, heretofore to wit, on the 17th day of March, 1926 the said defendant by her certain promissory note bearing said date and now overdue and unpaid, promised to pay to the order of John J. Madden the sum of Ten Thousand Dollars in installments of One Hundred Dollars on the first day of May, 1926 and on the first day of each and every month thereafter, with interest from the first day of May, 1926 until paid at the rate of seven per centum per annum.

Although often thereunto requested, the said defendant has not nor has anyone for her paid the whole or any part of the principal or interest of said note; but to discharge

the whole or any part of her obligation under said note, the said defendant has wholly failed, neglected and refused, and still fails, neglects and refuses.

Wherefore, the said plaintiff brings this suit and claims from the said defendant Ten Thousand Dollars with interest at the rate of seven per centum per annum from May 1, 1926, besides costs.

3 Third Count. The plaintiff, John J. Madden, sues the defendant, Mai G. Wyatt, for money payable by said defendant to the plaintiff for that, heretofore to wit, on the 17th day of March, 1926, the said defendant by her certain promissory note bearing said date and now overdue and unpaid, promised to pay to the order of John J. Madden the sum of Ten Thousand Dollars in installments of One Hundred Dollars on the first day of May, 1926, and on the first day of each and every month thereafter with interest from the first day of May, 1926, until paid at the rate of seven per centum per annum.

Although often thereunto requested, the said defendant has not nor has anyone for her paid the whole or any part of the principal or interest of said note; but to discharge the whole or any part of her obligation under said note, the said defendant has wholly failed, neglected and refused, and still fails, neglects and refuses.

Wherefore, the said plaintiff brings this suit and claims from the defendant Ten Thousand Dollars with interest at the rate of seven per centum per annum from May 1, 1926, besides costs.

Fourth Count. The plaintiff, John J. Madden, sues the defendant, Mai G. Wyatt, for money payable by said defendant to the plaintiff, for that heretofore on to wit, the 17th day of March, 1926, the said defendant by her certain promissory note bearing said date promised to pay to the order of John J. Madden, meaning thereby the plaintiff, the sum of Ten Thousand Dollars with interest thereon from the first day of May, 1926, until paid at the rate of

seven per centum per annum. That the defendant
4 agreed under this note to pay the principal and interest in installments of \$100 on the first day of May, 1926, and on the first day of each and every month thereafter.

That to secure the payments thereunder the said defendant executed and delivered to J. F. Hassin and W. M. Braswell a deed of trust on lot 716 in square 2672, which land is improved by the premises known as 1429 Columbia Road, N. W., situate in the District of Columbia. The said deed of trust provided, among other things, that should the defendant default in the payment under any note secured by any deed of trust on the said property, and should by reason of such default, the said property be sold by the trustees under any deed of trust; then the entire note was to become due and payable at the election of the holder. The defendant defaulted in her payments under a note secured by a prior deed of trust on the land and premises above mentioned. That by reason of the default by the defendant, the said land and premises were sold by the trustees under the said deed of trust. That this plaintiff elects to hold the entire note, set forth above, due and payable. The said defendant although often thereunto requested, has not nor has anyone for her paid the whole or any part of the principal or interest of said note; but to discharge the whole or any part of her obligation under said note, the said defendant has wholly failed, neglected and refused and still fails, neglects and refuses.

Wherefore, the said plaintiff brings this suit and claims the sum of Ten Thousand Dollars from the defendant with interest from the first day of May, 1926, at the rate of seven per centum per annum besides costs.

5 Fifth Count. The plaintiff, John J. Madden, sues the defendant, Mai G. Wyatt, for money payable by said defendant to the plaintiff, for that theretofore on to wit, the 17th day of March, 1926, the said defendant by her certain promissory note bearing said date promised to pay to the order of John J. Madden, meaning thereby the plaintiff, the sum of Ten Thousand Dollars with interest thereon from the first day of May, 1926, until paid at the rate of seven per centum per annum. That the defendant agreed under this note to pay the principal and interest in installments of \$100 on the first day of May, 1926, and on the first day of each and every month thereafter.

That to secure the payments thereunder the said defendant executed and delivered the J. F. Hassin and W. M.

Braswell a deed of trust on lot 716 in square 2672, which land is improved by the premises known as 1429 Columbia Road, N. W., situated in the District of Columbia. The said deed of trust provided, among other things, that should the defendant default in payment under any note secured by any deed of trust on the said property, and should by reason of such default, the said property be sold by the trustees under any deed of trust; then the entire note was to become due and payable at the election of the holder. The defendant defaulted in her payments under a note secured by a prior deed of trust on the land and premises above mentioned. That by reason of the default by the defendant, the said land and premises were sold by the trustees under the said deed of trust. That this plaintiff elects to hold the entire note, set forth above, due and payable. The said defendant although often thereunto requested, has not nor has anyone for her paid the whole or any part of the principal or interest of said note; but to
6 discharge the whole or any part of her obligation under said note, the said defendant has wholly failed, neglected and refused and still fails, neglects and refuses.

Wherefore, the said plaintiff brings this suit and claims the sum of Ten Thousand Dollars from the defendant with interest from the first day of May, 1926, at the rate of seven per centum per annum besides costs.

MARK P. FRIEDLANDER,
Attorney for Plaintiff.

Affidavit of Merit to Original Declaration.

Filed August 17, 1927.

* * * * *

DISTRICT OF COLUMBIA, ss:

John J. Madden being first duly sworn on oath deposes and says that he is the plaintiff in the above entitled cause wherein Mai G. Wyatt is named defendant; that this plaintiff has a good and meritorious cause of action against the said defendant for that on to wit, the seventeenth day of

March, 1926, the said defendant by her certain promissory note bearing said date, and now overdue & unpaid promised to pay to the order of the plaintiff, John J. Madden, the sum of Ten Thousand Dollars payable in monthly installments of \$100.00 on the first day of May, 1926, and \$100.00 on the first day of each and every month thereafter, with interest from the first day of May, 1926, until paid at the rate of 7% per annum. That the said defendant on the said Seventeenth day of March, 1926, by another promissory note bearing the same date, and now overdue & unpaid promised to pay to the plaintiff herein or his order the sum of Ten Thousand Dollars payable in installments of \$100.00 on the first day of May, 1926, and \$100.00 on the first day of each and every month thereafter, with interest from the first day of May, 1926, until paid at the rate of 7% per annum. Copies of the said notes being fully set forth in the Bill of Particulars attached hereto and prayed to be read as a part hereof; that the signatures on the said notes are the true and genuine signatures of the defendant; that this defendant has defaulted in all the payments thereof and fails and refuses and continues to fail and refuse to pay the said notes or any part thereof.

And the plaintiff claims there is justly due and owing to him from the defendant the sum of \$20,000.00 with interest thereon at the rate of 7% from the first day of May, 1926, besides costs of this suit, exclusive of all set-offs and just grounds of defense.

JOHN J. MADDEN.

Subscribed and sworn to before me this the 16th day of August, 1927.

[SEAL.]

HAROLD P. GANSS,
Notary Public, D. C.

MARK P. FRIEDLANDER,
437 *Investment Building*,
Attorney for the Plaintiff.

Motion for Judgment.

Filed October 29, 1927.

* * * * *

Now comes the plaintiff, John J. Madden, by his attorney and moves this Court for judgment against the de-

fendant, Mai G. Wyatt, for want of a sufficient affidavit of defense in the above entitled cause.

MARK P. FRIEDLANDER,
Attorney for the Plaintiff.

8 Douglas, Obear and Douglas,
Attorneys for the Defendant,
622 Southern Building,
City:

Take notice that the foregoing motion will be called for hearing before the Justice sitting in Circuit Court on Friday, November 4, 1927 at 10:00 O'Clock A. M. or as soon thereafter as counsel can be heard.

MARK P. FRIEDLANDER,
Attorney for the Plaintiff.

9 *Amended Pleas.*

Filed November 10, 1927.

* * * * *

Comes now the defendant, Mai W. Manning, sued herein as Mai G. Wyatt, and for the first amended plea to the amended declaration of the plaintiff and each count therein the defendant denies that on the 17th day of March, 1926, she promised to pay to the plaintiff the sum of \$20,000, or any part thereof, or in any manner as alleged in plaintiff's declaration and each count thereof; the defendant admits that she executed certain promissory notes referred to in the declaration, which promissory notes were made payable to the plaintiff and states that she delivered the said notes to the plaintiff and executed and delivered a deferred purchase money deed of trust to the plaintiff, securing said notes on certain premises known as 1429 Columbia Road, N. W., Washington, D. C., which plaintiff had agreed to sell and convey to the defendant; the defendant states, however, that she was induced to execute and deliver to the plaintiff the said note and the said deed of trust securing the same, in reliance upon certain material representations made by plaintiff through his duly authorized agent to the defendant, which representations were false and their falsity was known to plaintiff through his duly authorized

agent at the time said representations were made; that said representations were made to defendant with intent that they would be acted upon by the defendant: that the said representations were to the effect that the said premises 1429 Columbia Road, N. W., would be conveyed and delivered by the plaintiff to the defendant, subject to a first trust of \$90,000 due three years after date and to a second trust of about \$41,500, payable \$550.00 per month, including interest at 6% and to a third trust of about \$2,250, payable \$75.00 per month including interest at 6% and to a fourth trust of \$23,000, payable \$200.00 per month until paid; that said apartment property contained thirty-two apartments and was rented for \$22,500 per annum; that there was no restriction upon the collection of rents of said property; and that the defendant would receive from the plaintiff the sum of approximately \$5,500 in cash by way of adjustment of credits in the aforesaid purchase; that the aforesaid representations were false in that the first deed of trust of said apartment property for \$90,000 as aforesaid had less than two years to run instead of three as represented to the defendant; and in that the said property, when conveyed to the defendant, was subject to a fifth deed of trust of \$4,000, in addition to the four trusts specified above; and in that the said property, instead of being rented for \$22,500 per annum, was in truth and fact rented for less than \$22,000 per annum and could not be rented for more than said sum and in that said property was subject to certain covenants and restrictions not provided in said contract to the effect that H. L. Rust Company should collect rents from said property and should withhold all moneys therefrom until the fourth deed of trust thereon of \$23,000 was paid; and in that there was never paid nor intended to be paid to the defendant by the plaintiff the sum of approximately \$5,500, which was due to the defendant by the plaintiff by way of adjustment of credits as aforesaid; that had the defendant known of the falsity of the aforesaid representations as aforesaid, she would never have executed and delivered her notes for \$20,000, or the deed of trust securing the same to the plaintiff; that by reason of said false and fraudulent representations the fair market value of the said property at 1429 Columbia Road, N. W., instead of being considerably greater than the amount of the encum-

brances thereon, including the deed of trust securing defendant's purchase money notes for \$20,000 as aforesaid, was in truth and in fact less than the amount of the encumbrances thereon, exclusive of the deed of trust for \$20,000 given by defendant to plaintiff as aforesaid; and that by reason of the aforesaid false and fraudulent misrepresentations the defendant has been damaged by the plaintiff in a sum considerably in excess of the amount of her said notes to the plaintiff, i. e., in the amount of \$25,000.

The defendant further denies that the deed of trust securing the notes executed and delivered by defendant to the plaintiff provided that should the defendant default in the payment of any note secured by any deed of trust on the said property (other than the deed of trust securing said note) and should by reason of said default the property be sold by the said trustees, under any deed of trust (other than that securing the notes of the defendant) that the entire notes were to become due and payable at the election of the plaintiff.

Wherefore, the defendant states that she is not indebted unto the plaintiff in the sum of \$20,000, with interest as named in said declaration, or any part thereof.

II. For a second plea to the declaration of the plaintiff and each count thereof, the defendant states that the plaintiff, at the commencement of this suit, was and still is indebted to the defendant in the sum of \$25,000, for that heretofore, to-wit, on the 10th day of March, 1926, the plaintiff and the defendant entered into a certain written contract whereby the plaintiff agreed to sell and convey to the defendant premises known as 1429 Columbia Road, N. W., subject to a first trust of \$90,000, due three years after date, and to a second trust of about \$41,500, payable \$550 per month, including interest at 6%, and a third trust of about \$2,250, payable \$75 per month, including interest at 6% until paid, and to a fourth trust of \$23,000, payable \$200 per month until paid, including interest at 7%; that the plaintiff further agreed by said contract that rents, interest, taxes, and insurance would be adjusted by calculation to the date of settlement thereunder; that plaintiff further agreed by said contract that said apartment property at 1429 Columbia Road, N. W., contained thirty-two apartments and was rented for \$22,500 per an-

num; and that in consideration thereof and in payment for said premises 1429 Columbia Road, N. W., the defendant agreed to execute and deliver to the plaintiff her note for \$20,000 payable \$200 per month, including interest at 7% to be secured by a fifth deed of trust as part of deferred purchase money, on said premises 1429 Columbia Road, N. W., and in further consideration thereof the defendant agreed to convey to the plaintiff premises known as 1332-1334 Columbia Road, N. W. subject to a first trust of \$17,000, with interest at 7%, due in about two years after date and to a second trust of about \$9,700, payable \$150 per month including interest at 6%, due in about three years after date; that acting in accordance with the terms of said contract the defendant executed and delivered to plaintiff her said promissory notes for \$20,000, payable \$200 per month, including interest at 7% and executed and delivered to plaintiff a deed of trust securing the same on said prem-

ises 1429 Columbia Road, N. W., and the defendant
13 executed and delivered to the plaintiff her deed conveying to the plaintiff premises known as 1332-1334 Columbia Road, N. W., subject to the encumbrances specified in said contract; but that the plaintiff in violation and breach of his said contract with the defendant did not carry out the terms of said contract on his part to be performed, in that he conveyed said premises, 1429 Columbia Road, N. W., to the defendant, subject to a first trust of \$90,000, having less than two years to run instead of three years as provided by said contract; and in that the said property when conveyed to the defendant was subject to a fifth deed of trust of \$4,000 not provided in said contract; and in that the said property instead of being rented for \$22,500 per annum, as warranted by said contract was in truth and fact rented for less than \$22,000 per annum and could not be rented for more than said sum; and in that said property was also subject to certain covenants and restrictions not provided in said contract to the effect that H. L. Rust Company should collect rents from said apartment property and withhold all moneys therefrom until the fourth deed of trust thereon of \$23,000 was paid; and in that there was never paid to the defendant the sum of approximately \$5,500 which was due the defendant by way of adjustment and credit for accrued interest, rents and taxes in accord-

ance with said contract; and in that the rental agreements for said property were never delivered to the defendants in accordance with the terms of said contract; that by reason of the breaches by the plaintiff of his contract with defendant as aforesaid, the fair market value of said premises 1429 Columbia Road, N. W., conveyed by plaintiff to defendant as aforesaid, was, at the time of said breach by de-
14 fendant, worth less than the amount of the encumbrance thereon existing, exclusive of the deed of trust securing defendant's notes to plaintiff for \$20,000 as aforesaid but that had plaintiff carried out his said contract with the defendant, according to its terms the said property would have been worth considerably more than the amount of said encumbrances including said deed of trust securing defendant's said notes to plaintiff for \$20,000; that by reason of the breach of said contract by plaintiff as aforesaid, the defendant has been damaged by the plaintiff in the full sum of \$25,000; that the defendant is willing that the same may be set off against plaintiff's demand in so far as it is covered by the amount claimed by the plaintiff and counter-claims from the plaintiff, in excess of the amount claimed by him, the sum of \$5,000.

Wherefore, defendant prays that the suit of the plaintiff may be dismissed and that she may have judgment against the plaintiff for the sum of \$5,000, together with her costs herein expended.

DOUGLAS, OBEAR & DOUGLAS,
EDMUND D. CAMPBELL,
Attorneys for Defendant.

Amended Affidavit of Defense.

* * * * *

DISTRICT OF COLUMBIA, ss:

Mai W. Manning, being first duly sworn, on oath deposes and says that she is the defendant in the above entitled cause, sued herein under her maiden name as Mai G. Wyatt; that she has personal knowledge of the facts herein set forth.

Affiant says, therefore, that she has a good and just defense to the plaintiff's cause of action for that the
15 affiant denies that on the 17th day of March, 1926 she promised to pay to the plaintiff the sum of \$20,-

000, or any part thereof, in the manner as alleged in plaintiff's affidavit of merit; the defendant admits that she executed the two certain promissory notes referred to in plaintiff's affidavit of merit, which promissory notes were made payable to the plaintiff and states that she delivered the said notes to the plaintiff and executed and delivered a deferred purchase money deed of trust to the plaintiff, securing said notes on certain premises known as 1429 Columbia Road, N. W. Washington, D. C., which plaintiff had agreed to sell and convey to the defendant; the defendant states, however, that she was induced to execute and deliver to the plaintiff the said notes and the said deed of trust securing the same, in reliance upon certain material representations made by plaintiff through his duly authorized agent to the defendant, which representations were false and their falsity was known to plaintiff through his duly authorized agent at the time said representations were made; that said false representations were made to defendant with intent that they would be acted upon by defendant; that said representations were to the effect that the said premises 1429 Columbia Road, N. W., would be conveyed and delivered by the plaintiff to the defendant, subject only to a first trust of \$90,000 due three years after date and to a second trust of about \$41,500, payable \$550.00 per month, including interest at 6% and to a third trust of about \$2,250, payable \$75.00 per month, including interest at 6% and to a fourth trust of \$23,000, payable \$200.00 per month until paid; that said apartment property contained thirty-two apartments and was rented for \$22,500 per

16 annum;

that there was no restriction upon the collection of rents of said property; and that the defendant would received from the plaintiff the sum of approximately \$5,500 in cash by way of adjustment credits in the aforesaid purchase; that the aforesaid representations were false in that the first deed of trust of said apartment property for \$90,000 as aforesaid had less than two years to run instead of three years, as represented to the defendant; and in that the said property, when conveyed to the defendant, was subject to a fifth deed of trust of \$4,000, in addition to the four trusts specified above; and in that the said property, instead of being rented for \$22,500 per annum,

was in truth and in fact rented for less than \$22,000 per annum and could not be rented for more than said sum and in that said property was subject to certain covenants and restrictions not provided in said contract to the effect that H. L. Rust Company should collect rents from said property and should withhold all moneys therefrom until the fourth deed of trust thereon of \$23,000 was paid; and in that there was never paid nor intended to be paid to the defendant by the plaintiff the sum of approximately \$5,500, or any other sum, which was due to the defendant by the plaintiff by way of adjustment of credits as aforesaid; that had the defendant known of the falsity of the aforesaid representations as aforesaid, she would never have executed and delivered her notes for \$20,000, or the deed of trust securing the same to the plaintiff; that by reason of said false and fraudulent representations the fair market value of the said property at 1429 Columbia Road, N. W., instead of being considerably greater than the amount of the encumbrances thereon, including the deed of trust

securing defendant's purchase money notes for
17 \$20,000 as aforesaid, was in truth and in fact
worth less than the amount of the encumbrances
thereon, exclusive of the deed of trust for \$20,000 given by
defendant to plaintiff as aforesaid; and that by reason of
the aforesaid false and fraudulent misrepresentations the
defendant has been damaged by the plaintiff in a sum con-
siderably in excess of the amount of her said notes to the
plaintiff, to-wit, in the amount of \$25,000.

The defendant further denies that the deed of trust securing the notes executed and delivered by defendant to the plaintiff provided that should the defendant default in the payment of any note secured by any deed of trust on the said property (other than the deed of trust securing said note) and should by reason of said default the property be sold by the said trustees under any deed of trust (other than that securing the notes of the defendant) that the entire notes were to become due and payable at the election of the plaintiff.

And the defendant further states that she has a good and just defense to plaintiff's action by way of set off, for that the plaintiff, at the commencement of this suit, was and still is indebted to the defendant in the sum of \$25,000, for that

heretofore, to-wit, on the 10th day of March, 1926, the plaintiff and the defendant entered into a certain written contract whereby the plaintiff agreed to sell and convey to the defendant premises known as 1429 Columbia Road, N. W., subject only to a first trust of \$90,000, due three years after date, and to a second trust of about \$41,500, payable \$550 per month, including interest of 6%, and a third trust of about \$2,250, payable \$75 per month, including interest at 6% until paid, and to a fourth trust of \$23,000, payable \$200 per month until paid, including interest at 7%; that the plaintiff further agreed by said contract that rents, interest, taxes, and insurance would be adjusted by calculation to the date of settlement thereunder; that plaintiff further warranted by said contract that said apartment property at 1429 Columbia Road, N. W., contained thirty-two apartments and was rented for \$22,500 per annum; and that in consideration thereof and in payment for said premises 1429 Columbia Road, N. W., the defendant agreed to execute and deliver to the plaintiff her note for \$20,000 payable \$200 per month, including interest at 7% to be secured by a fifth deed of trust as part of deferred purchase money, on said premises 1429 Columbia Road, N. W., and in further consideration thereof the defendant agreed to convey to the plaintiff premises known as 1332-1334 Columbia Road, N. W., subject to a first trust of \$17,000, with interest at 7%, due in about two years after date and to a second trust of about \$9,700, payable \$150 per month including interest at 6%, due in about three years after date; that acting in accordance with the terms of said contract the defendant executed and delivered to plaintiff her said promissory notes for \$20,000, payable \$200 per month, including interest at 7% and executed and delivered to plaintiff a deed of trust securing the same on said premises 1429 Columbia Road, N. W., and the defendant executed and delivered to the plaintiff her deed conveying to the plaintiff premises known as 1332-1334 Columbia Road, N. W., subject to the encumbrances specified in said contract and the defendant performed every other act which she had agreed by said contract to do or perform; but that the plaintiff, in violation and breach of his said contract with the defendant, did not carry out the terms of said contract on his part to be performed,

in that he conveyed said premises, 1429 Columbia Road, N. W., to the defendant, subject to a first trust of \$90,000, having less than two years to run instead of three years as provided by said contract; and in that the said property when conveyed to the defendant was subject to a fifth deed of trust of \$4,000 not provided in said contract; and in that the said property instead of being rented for \$22,500 per annum as warranted by said contract was in truth and fact rented for less than \$22,000 per annum and could not be rented for more than said sum; and in that said property was also subject to certain covenants and restrictions not provided in said contract to the effect that H. L. Rust Company should collect rents from said apartment property and withhold all moneys therefrom until the fourth deed of trust thereon of \$23,000 was paid; and in that there was never paid to the defendant the sum of approximately \$5,500 which was due the defendant by way of adjustment and credit for accrued interest, rents and taxes in accordance with said contract; and in that the rental agreements for said property were never delivered to the defendant in accordance with the terms of said contract; that by reason of the breaches by the plaintiff of his contract with defendant as aforesaid, the fair market value of said premises 1429 Columbia Road, N. W., conveyed by plaintiff to defendant as aforesaid, was, at the time of said breach by defendant, less than the amount of the encumbrance thereon existing, exclusive of the deed of trust securing defendant's notes to plaintiff for \$20,000 as aforesaid but

20 that had plaintiff carried out his said contract with the defendant, according to its terms the said property would have been worth considerably more than the amount of said encumbrances including said deed of trust securing defendant's said notes to plaintiff for \$20,000; that by reason of the breach of said contract by plaintiff as aforesaid, the defendant has been damaged by the plaintiff in the full sum of \$25,000; that the defendant is willing that the same may be set off against plaintiff's demand in so far as it is covered by the amount claimed by the plaintiff and counter-claims from the plaintiff, in excess of the amount claimed by him, the sum of \$5,000.

Wherefore, affiant denies that there is justly due and owing to the plaintiff from the defendant the sum of

\$20,000, with interest as claimed, or any other sum, and states that there is justly due and owing to the defendant from the plaintiff the sum of \$5,000, besides costs of this suit, exclusive of all set-offs and just grounds of defense on the part of said plaintiff.

MAI W. MANNING.

Subscribed and sworn to before me this 8th day of November, 1927.

[SEAL.]

GERTRUDE ELLIS,
Notary Public, D. C.

21 Supreme Court of the District of Columbia.

Saturday, November 19, 1927.

Session resumed pursuant to adjournment: Mr. Justice Bailey, presiding.

* * * * *

Upon consideration of the motion of plaintiff filed herein by his attorney for judgment under the 73rd. Rule, and heretofore submitted after argument thereon, it is ordered that said motion be, and the same is hereby, granted.

Wherefore it is considered that plaintiff recover herein of the defendant the sum of Thirty Eight Hundred (\$3800.00) Dollars, with interest on \$200.00 from May 1st, 1926; on \$200.00 from June 1st, 1926; on \$200.00 from July 1st, 1926; on \$200.00 from August 1st 1926; on \$200.00 from September 1st 1926; on \$200.00 from October 1st 1926; on \$200.00 from November 1st 1926; on \$200.00 from December 1, 1926; on \$200.00 from January 1st 1927; on \$200.00 from February 1st 1927; on \$200.00 from March 1st 1927; on \$200.00 from April 1, 1927; on \$200.00 from May 1, 1927; on \$200.00 from June 1, 1927; on \$200.00 from July 1, 1927; on \$200.00 from August 1, 1927; on \$200.00 from September 1, 1927; on \$200.00 from October 1, 1927, and on \$200.00 from November 1, 1927, said interest at the rate of seven (7%) per centum per annum, until paid, together with his costs of suit to be taxed by the Clerk, and have execution thereof; said judgment covering period of months of May 1926 to November, 1927, both inclusive.

22

Order for Citation, &c.

Filed November 25, 1927.

* * * * *

The Clerk of said Court will please note an appeal in the above-entitled cause and issue citation against the appellee.

DOUGLAS, OBEAR & DOUGLAS,
Attorneys for Defendant.

23 Filed Nov. 29, 1927. Frank E. Cunningham, Clerk.
In the Supreme Court of the District of Columbia.

At Law.

No. 73788.

JOHN J. MADDEN,

VS.

MAI G. WYATT.

The President of the United States to John J. Madden,
Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein, under and as directed by the Rules of said Court, pursuant to an Appeal from the Supreme Court of the District of Columbia, on the 25th day of November, 1927, wherein Mai G. Wyatt is Appellant, and you are Appellee, to show cause, if any there be, why the Judgment rendered against the said Appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Walter I. McCoy, Chief Justice of the Supreme Court of the District of Columbia, this 25th day of November in the year of our Lord one thousand nine hundred and twenty-seven.

[Seal, Supreme Court of the District of Columbia.]

FRANK E. CUNNINGHAM,
Clerk,

By CHAS. B. COFLIN,
Asst. Clerk.

Service of the above Citation accepted this 29 day of Nov. 1927.

MARSH P. FRIEDLANDER,
Attorney for Appellee.

[Endorsed:] No. 73788. Law. Equity. Madden vs. Wyatt. Citation. Issued Nov. 25, 1927. Filed Nov. 29, 1927. Frank E. Cunningham, Clerk.

24

Memoranda.

November 29, 1927.—Appeal bond fixed at \$100 or \$50 cash deposit.

December 1, 1927.—\$50 deposited in lieu of cost bond.

Assignment of Errors.

Filed December 19, 1927.

* * * * *

The defendant in the above entitled cause, for appeal to the Court of Appeals from the orders and decrees entered therein, files this, her assignment of errors, upon the appeal so taken and says that the Court, in making said orders and decrees in the proceedings heretofore, had erred as follows:

1. In granting the motion of the plaintiff for judgment against the defendant for want of a sufficient affidavit of defense.

2. In holding that the amended affidavit of defense filed by the defendant was insufficient.

3. In not overruling the motion for judgment filed on behalf of the plaintiff.

4. In finding in favor of the plaintiff.

EDMUND D. CAMPBELL,
GEORGE D. HORNING,
Attorneys for Defendant.

25

Designation of Record.

Filed December 19, 1927.

* * * * *

The Clerk of the Court will please prepare the transcript of record on appeal of the above entitled cause and include the following:

1. Amended declaration.
2. Affidavit of merit.
3. Amended pleas of defendant.
4. Amended affidavit of defense.
5. Motion of plaintiff for judgment for want of sufficient affidavit of defense.
6. Memo., November 19th, 1927, allowing motion of plaintiff and entering judgment against defendant.
7. Citation on appeal and acceptance of service thereof by counsel for plaintiff.
8. Memo., November 29th, 1927, fixing \$100 cost undertaking or \$50 cash deposit.
9. Memo., December 1st., 1927, \$50 cash deposit for costs.
10. Assignment of errors.
11. This designation.

EDMUND D. CAMPBELL,
GEORGE D. HORNING,
Attorneys for Defendant.

26 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 25, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 73788 at Law, wherein John J. Madden is Plaintiff and Mai G. Wyatt is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 1st day of February, 1928.

[Seal, Supreme Court of the District of Columbia.]

FRANK E. CUNNINGHAM,
Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 4718. Mai G. Wyatt, appellant, vs. John J. Madden. Court of Appeals, District of Columbia. Filed Feb. 7, 1928. Henry W. Hodges, Clerk.